SUPPLEMENT TO

The Mysore Gazette.

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BANGALORE, THURSDAY, SEPTEMBER 21, 1911.

Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Council Chamber, Public Office Buildings, Bangalore, on Monday, the 11th September 1911, at 12 noon.

PRESENT.

K. P. PUTTANNA CHETTY, ESQ., First Councillor (Presiding).

Ex-Officio Member.

H. V. NANJUNDAYYA, ESQ., M.A., M.L. (Second Councillor).

ADDITIONAL MEMBERS.

Official.

1. D. SHAMA RAO, ESQ., RAO BAHADUR.
2. K. S. DORASWAMI IYER, ESQ.
3. M. MUTHANNA, ESQ., RAI BAHADUR.
4. C. S. DORASWAMI IYER, ESQ., B.A., B.L.

Non-Official.

1. RAJAMANTRAPRAVINA C. SRINIVASIENGAR, ESQ.
2. M. NARAIN RAO, ESQ.
3. SYED AMIR HASSAN, ESQ.
4. M. C. RANGIENGAR, ESQ., B.A.
5. D. VENKATRAMAIYA, ESQ., B.A.

ABSENT.

Official.

1. D. DEVARAJ URS, ESQ.
2. C. SRIKANTESWARA AIYAR, ESQ., B.A., B.L.

Non-Official.

1. RAJAKARYAPRAVINA, A. RANGASWAMI IYENGAR, ESQ., B.A., B.L., RAO BAHADUR.
2. A. RAMANNA, ESQ.

PRESENT.

S. HIRIYANNAIYA, ESQ., M.A., B.L. (Secretary).

MR. K. P. PUTTANNA CHETTY, First Councillor:—

Gentlemen,—In the unavoidable absence of the Dewan from Bangalore, it has become my duty to preside over the meeting of the Council to-day. We shall now proceed with the business on the agenda paper.

The Secretary then reported to the Council (*a*) the receipt of His Highness the Maharaja's assent to (1) The Bill to amend the Government Savings Banks Act, 1873, as applied to Mysore, (2) The Code of Civil Procedure Bill, (3) The Mysore Limitation Bill and (4) The Mysore Guardians and Wards Bill, on the 9th May 1911, and to (5) The Mysore Insolvency Bill and (6) The Mysore Public Conveyances Bill, on the 15th May 1911, and to (7) The Mysore Small Cause Courts Bill, on the 19th June 1911, and

(*b*) that the following new members took their seats in the Council:—

(1) MR. D. SHAMA RAO. RAO BAHADUR.
(2) MR. M. MUTHANNA, RAI BAHADUR.
(3) MR. C. S. DORASWAMI IYER.
(4) RAJAMANTRAPRAVINA MR. C. SRINIVASIENGAR.
(5) MR. SYED AMIR HASSAN.
(6) „ M. C. RANGIENGAR.

Bill to amend the Mysore Municipal Regulation.

MR. H. V. NANJUNDAYYA, in moving that the Bill to amend the Mysore Municipal Regulation, 1906, be passed, said:—

Sir,—As MR. K. P. PUTTANNA CHETTY, who was to have moved this proposition, has had to preside over our deliberations to-day, it has fallen to my lot to move this motion. I need say nothing in support of it as the Bill has been before the Council at various stages and as it was resolved at the last meeting that it be passed at a subsequent meeting of the Council. I now beg formally to move that the Bill be passed.

MR. C. S. DORASWAMI IYER seconded the motion, which was put and agreed to.

Bill to amend the Mysore Local Boards Regulation.

MR. H. V. NANJUNDAYYA, then said:—Sir,—I now beg to move formally that the Bill to amend the Mysore Local Boards Regulation, 1902, be passed.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

The Partition Bill.

MR. H. V. NANJUNDAYYA, in moving that the Bill to amend the law relating to Partition be read in Council, said:—

Sir,—This Bill has been before the Council already, and at the last meeting of the Council I explained the nature and scope of the measure that is now proposed to be introduced. It is not necessary for me at this stage to say anything more about it. I move that the Bill be read in Council.

MR. M. C. RANGIENGAR, in seconding the motion, said:—Sir,—In view of the next motion on the agenda, I refrain from making any remarks at this stage though the provisions of the draft Bill are not calculated to meet all the objections to the existing law which have been urged by the Representative Assembly before Government. These are however matters to be considered in the Select Committee. I beg to second the motion. The motion was put to the vote and agreed to.

MR. H. V. NANJUNDAYYA next moved that the Bill be referred to a Select Committee consisting of Rajamantrapravina Mr. C. Srinivasiengar, Mr. M. C. Rangiengar, Mr. D. Shama Rao, Mr. C. S. Doraswami Iyer and himself.

MR. M. C. RANGIENGAR seconded the motion, which was adopted.

Bill for the Protection of Judicial Officers.

MR. H. V. NANJUNDAYYA, in moving that the Bill for the Protection of Judicial Officers be read in Council, said:—

Sir,—The Bill has been duly published in the Gazette. It is a short one and I may just as well take the permission of the Council to read it.

He then read the provisions of the Bill and continued :—It is a well-known rule of law that Judicial Officers should be exempt from liability, either Civil or Criminal, for all acts done in the execution of their judicial duty. Even in the absence of this enactment the principle would be recognised in a court of law, that such officers cannot be sued for acts done by them in the exercise of their judicial functions. I may read to you a passage from an authoritative text book showing how in the absence of such an enactment the law would stand.

"The rule is that no action will lie against a judge for any acts done or words spoken in his judicial capacity in a court of justice; and the exemption is not confined to the judges of superior courts. It is founded on the necessity of Judges being independent in the exercise of their duties A Judge is not liable in trespass for attaching goods unless he knew or ought to have known that he had no jurisdiction, and it lies on the plaintiff to prove wtnt of jurisdiction. The conclusion formed by a Judge acting judicially on a mater of fact that is within his jurisdiction to determine, cannot be disputed in an action for anything judicially done by him upon the footing of that conclusion." (Pollock on Torts.)

While considering the Civil Procedure Bill, the Select Committee thought that it would be better to introduce the provision contained in Act XVIII of 1850 of British India into the Statute Book of Mysore. This Bill has been framed after that British Act. While passing the Civil Procedure Code, it was found necessary to put in Section 152A for the purpose of giving certain protection to judicial officers. That was in connection with sales. We found it necessary to do it because the provision contained in the Bill was not in force. Now there would no longer be any necessity for keeping Section 152A in the C. P. C. and so it is proposed in clause 2 of this Bill to repeal that section. I beg now to move that the Bill be read in Council.

MR. C. S. DORASWAMI IYER, in seconding the motion, said:—Sir,—I beg to second the motion and in seconding I only have to add that the act clearly distinguishes judicial acts from executive acts or acts which are of an administrative nature from acts which are done in the exercise of any power that is vested by law. It is the judicial acts of Magistrates and Judges that are sought to be protected under this Regulation for the simple reason that on account of public policy acts done *bonâ fide* in the exercise of their jurisdiction or supposed to have been done in the exercise of their jurisdiction should be protected. This Act has been in force for nearly 50 years and more and it seems to have worked well. The principle to be found in several Acts relating to the subject has been consolidated here. I shall read what Sir Lawrence Jenkins says regarding this provision in a recent judgment. He says, "The protection afforded rests on public policy; and though thereby a malicious Judge or Magistrate may gain a protection designed not for him but in the public interest, it does not follow that he can exercise his malice with impunity. So there is no fear that a malicious Judge will be protected by the Act." With these few words I beg to second the motion that has been put by the Second Councillor.

The motion was then put to the vote and carried.

MR. H. V. NANJUNDAYYA, next moved that the above Bill be not referred to a Select Committee and that the ordinary rules of business be suspended so as to permit of the Bill being taken into consideration by the Council: He said :—

Sir,—The provision which is meant to be introduced by the Bill now before the Council is a very simple one. The principle has been long recognised. There is no dispute as to its applicability and so it is unnecessary to go through all the formal procedure for passing Bills in the Council. I therefore move that this Bill for the Protection of Judicial Officers be not referred to a Select Committee and that the ordinary rules of business be suspended so as to permit of the Bill being taken into consideration by the Council.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA then moved that the Bill be considered and adopted by the Council. MR. C. S. DORASWAMI IYER seconded the motion, which was passed.

MR. H. V. NANJUNDAYYA next moved that the Bill be taken up and passed at a subsequent meeting of the Council.

MR. C. S. DORASWAMI IYER seconded the motion, which was adopted.

Bill to amend the Indian Contract Act.

MR. H. V. NANJUNDAYYA, in moving that the Bill further to amend the Indian Contract Act, as in force in Mysore, be read in Council, said:—

SIR,—The next measure relates to the amendment of the Indian Contract Act as it is in force in Mysore. Both the Bill and the statement of Objects and Reasons are printed and supplied to the members of the Council. The scope of the alterations will be easily seen therefrom. The principles underlying the provision of the Bill have long been elaborated in Courts of Equity in England and have been embodied more or less in propositions in authorised text-books of law. When this Bill was before the Government of India Council, it was threshed out in great detail and the Bill as originally framed was considerably modified when it went before the Select Committee. From a perusal of the discussions which were held in that Council, I find that no serious objection was raised to the principles introduced in the present Bill and that they were all admitted to be beneficial in their operation. I may go briefly through the provisions of the Bill and show in what manner it affects the law as it stands at present. The first clause is the usual one about title, extent, commencement and application. The fourth sub-clause of that clause is what may give rise to some difference of opinion. It runs as follows:—

"It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit after the commencement of this Regulation."

The justification for that provision is that the provisions embodied in the Bill are declared to be the law as it may reasonably be interpreted by the Courts to be the existing law. Then the next provision is one that deals with "undue influence" and gives a better definition of "undue influence" than is contained in the present Section 16 of the Contract Act. The provision as it stands at present is this:—

"Undue influence" is said to be employed in the following cases:—

(1) When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained.

(2) When a person whose mind is enfeebled by old age, illness or mental or bodily distress is so treated as to make him consent to that to which, but for such treatment, he would not have consented, although such treatment, may not amount to coercion."

This, as it stands, merely gives two instances in which undue influence may be said to exist. The provision embodied in the new Section 16 tries to give a more logical definition of "undue influence." But I do not suppose it is meant to be a definition in the logical sense; it is meant to be a more scientific description of undue influence. What we propose to substitute for Section 16 is this:—

"(1) A contract is said to be induced by undue influence when the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

Then follow some instances in which undue influence may be said to exist:—

"(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress."

The next sub-clause gives a rule, about the burden of proof. But this does not affect Section 111 of the Indian Evidence Act which is perhaps wider in its operation.

In regard to the proposed modification on this point I may observe at this stage that contracts will not be tainted by undue influence merely because at the time the parties entered into the contract one of them was in a position of advantage in relation to the other. It is not only the contract that is to be taken into consideration but some antecedent relation between the parties. One of them must bear some relation to the other independent of the contract which is a relation likely to give him an opportunity to dominate over the will of the other. The illustrations given show clearly the applicability of the principles embodied in the section.

The next section that is meant to be amended is Section 19. It runs thus:—

"When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused."

That is, the contract stands legal, but the party who has been induced to enter into the contract by means of coercion, undue influence, fraud or misrepresentation has the right to repudiate the contract. So it is said to be voidable and the person who can avoid it is the person who has been induced by means of any of those vitiating circumstances to enter into the contract. It is proposed to omit the words "undue influence" in this Section 19 and add a new Section 19 A, which is practically the same as that which now exists, *viz.*—

"When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused."

What follows is an addition. "Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just."

If the contract is made voidable, it must be either accepted in its entirety or altogether avoided and in the latter case no legal consequences can attach to it. That is meant to be modified in this manner, *viz.*, if the party has received any benefit, he may avoid the contract on such terms as to the Court may seem just.

In the fourth clause, the alteration is a merely verbal one. In Section 25, instead of the word "assurances" we insert the word "documents." The next alteration is also of the same kind.

Then as to the next alteration. It is perhaps a misprint that has crept into the Act. The word "composition" will now be substituted for the word "compensation" occurring in illustration (*e*) to Section 63.

Then we come to Section 74. Paragraph 1 of the section stands thus:—

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named."

The principle on which the Courts act in such a case is that the amount mentioned in the contract is what is in legal language in the nature of a penalty. The party is not necessarily entitled to recover the whole amount. He is only entitled to recover reasonable compensation for the loss he sustained. The alteration that is meant to be made is in these words:—

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, or, as the case may be, the penalty stipulated for."

Then there is an explanation which also is new:—"A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

Then some additional illustrations are given. There have been cases in which even 75% interest has been allowed and Courts have declined to interfere with the contract of the parties. That explanation coupled with illustration (*d*) to be added will give power to the Courts to interfere with the contract of the parties in cases where they consider the terms exorbitant or unconscionable. I have next to invite your attention to the explanation to clause 7 in the statement of objects and reasons. These are all the provisions which are meant to be affected by the Bill before us. As I stated already, the principles underlying these changes were all very well and elaborately discussed in the Council of the Government of India; and from a perusal of the discussions I am led to think that there need not be any hesitation in accepting all these changes. It is not my intention to force my view on the honourable members of this Council for acceptance but it seems to me that there is not much gained by going through all the usual processes of referring the Bill to a Select Committee, considering their report and so on. I therefore formally move that this Bill be read in Council.

MR. C. S. DORASWAMI IYER, in seconding the motion, said:—

Sir,—I beg to second the motion and in doing so I only wish to say that it is unnecessary to deal elaborates with the reasons for introducing these changes. The learned mover has said that the Bill has been before the Legislative Council both in the Council as well as in the meeting of the Select Committee and that there is hardly any room now left therefore for discussion. The amendment simply codifies the general principle underlying what was given by way of illustration in Section 16 of the old Act. An attempt at codification of what "undue influence" is meant to be in Courts of Equity in England is made here. We have in the Indian Statute Book an example of "undue influence" in Section 48 of the Indian Succession Act and some of the illustrations thereto. The Contract Act being complete in itself, it is only proper that there should be a complete definition of it in the Act itself. Section 19 A is only an amplification of the principles contained in the definition of "undue influence" in Section 16, and the latter portion of Section 19 A refers to cases where a party who has entered into an unconscionable transaction with another wants to retain the benefit of it. That ought not to be given to him and the principle on which it is based is to be found both in Section 64 of the Indian Contract Act and Section 38 of the Specific Relief Act.

Coming to Section 74, the explanation does not take away from the Court the discretion vested in it of allowing any rate of interest, if not a penalty, if the higher rate of interest is not extravagant. and there is no other indication that a penalty was intended. The word used is "may," not "shall." With these few observations I beg to second the motion.

The motion was put and agreed to.

MR. H V. NANJUNDAYYA, in moving that the above Bill be not referred to a Select Committee and that the ordinary rules of business be suspended so as to permit of the Bill being taken into consideration by the Council, said:—

Sir,—If it is acceptable to the honourable members that we need not carry the Bill through all the normal stages of a Bill submitted to the Council, I beg to move that the above Bill be not referred to a Select Committee. If, however, it is the sense of the meeting that the Bill had better go before a Select Committee, I shall not oppose the suggestion but I shall gladly amend my proposition.

MR. M. C. RANGIENGAR:—Sir,—Sub-section (4) of Section 1 is calculated to entail some hardship on suitors. I think it requires further consideration. In so far as the words "suit instituted" are concerned there is no difficulty, but there are the further words "or which is put in issue in any suit." That suit might have been filed before this Bill becomes law and decided *ex parte* and an appeal might have been preferred, in which case also the amendment will apply as the draft stands at present. Whether such a state of the law is satisfactory or not, must be discussed by a Select Committee, I should think.

MR C. S. DORASWAMI IYER, then said:—

Sir,—The observations made by Mr. M. C. Rangiengar seem to be very pertinent. I took particular care to read the judgments of the High Courts of Madras and Allahabad since the passing of the amendment in the years 1901 and 1902, when the question came up for decision by both the High Courts. The Madras High Court had to deal earlier with the subject. The Chief Justice who delivered the judgment seems to be of opinion that the amendment is defective. In his opinion "it applies to every contract in respect of which any suit is instituted or which is put in issue in any suit *instituted* after the commencement of the Act." He would have the word "instituted" inserted before "after" with a view to make it very clear that the amendment refers to two distinct cases, in both of which the suit must have been instituted after the commencement of the Amendment Act. As it is, it would appear as if the contract could be put in issue even if the suit was instituted before the commencement of the operation of the Act, no matter at what stage it is, whether it is in first appeal or second appeal. And the Allahabad High Court is of opinion that the amended section applies without regard to the question when the suit was instituted. Since we have the benefit of the difference of opinion of two High Courts, the proposition may be moved with the word "instituted" added after the word "suit" in line 2.

MR. H. V. NANJUNDAYYA then said that he would adopt the suggestion made by the members and that if he did so there would be no necessity as far as

he could see for the Bill going into Select Committee. He therefore moved formally that the Bill be not referred to a Select Committee and that the ordinary rules of business be suspended so as to permit of the Bill being taken into consideration by the Council.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA, then said:—

With your permission, Sir, I beg to move that, in clause (1), sub-clause (4), of this Bill, the word "instituted" be inserted after the word "suit" in line 2.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA then moved that the Bill be considered and adopted by the Council.

Mr. C. S. DORASWAMI IYER seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA next moved that the Bill as amended be taken up and passed at a subsequent meeting of the Council. The motion was put and agreed to.

Bill to provide for the establishment of Village Courts in Mysore.

Mr. H. V. NANJUNDAYYA, in moving that the Bill to provide for the establishment of Village Courts in Mysore be read in Council, spoke as follows:—

Sir,—This Bill and the statement of objects and reasons were referred to and explained by me when I submitted the Bill the first time to the Council. It is unnecessary for me, therefore, to go over the same ground again as the next proposition is that the Bill should be referred to a Select Committee.

MR. D. VENKATARAMAIYA seconded the motion, which was carried.

The Bill was then referred to a Select Committee consisting of Messrs. M. C. Rangiengar, Syed Amir Hassan, M. Narain Rao, K. S. Doraswami Iyer, and H. V. Nanjundayya.

Bill to further amend the Mysore Land Revenue Code.

MR. H. V. NANJUNDAYYA, in moving that the Bill further to amend the Mysore Land Revenue Code, 1888, be read in Council, said:—

Sir,—This motion refers to the Bill to further amend the Mysore Land Revenue Code. In the year 1906, a case entitled Subba Rao *v.* Vira Naika which is reported at page 118 of Vol. XI of the Mysore Chief Court Reports came up for decision by the Chief Court. I had the honor of being one of the Judges who decided that case. There a majority of the Judges held that the money payable by an inferior holder (whether a khadim tenant or not) to a superior holder in an alienated village was not a charge on the holding in respect of which the arrears accrued and that the period of limitation applicable to suits for the recovery of such dues was six years. Government consider that a superior holder in an Inam village is in respect of the rent payable to him in the same position as Government in a Government village in respect of the revenue payable to them. In the Madras Estates Land Act which applies to zemindars and landholders, a right of first charge has been conceded to the superior holder. Arrears due to Government are a paramount charge. The first charge that is now to be conceded, though not perhaps equivalent to a paramount charge, will give the superior holder all the protection that he needs. If we make it a charge on the holding, then suits for the recovery of rent due in respect of such lands will fall under the rule of limitation contained in Article 132 of the First Schedule of the Mysore Limitation Regulation. The period now applicable as decided by the Chief Court is six years. I may say that the foundation for this view is somewhat uncertain. One of the Judges who decided that case considered that the money in the nature of revenue payable to a Superior Holder was not rent and that therefore the period of limitation was six years. Another of the Judges held that though it was rent yet that the six-year period was applicable; while the Chief Judge considered that the period was only three years as for rent. So each of the three Judges seems to have taken a different view of the matter. So that when a case of this kind comes before a court again, it is difficult to say how exactly it will be decided. To remove this uncertainty it is meant to put in this Bill a clause that the limitation applicable to such suits shall be six years.

Clause 2 of the Bill effects a slight alteration in Section 97 of the Land Revenue Code. The superior holder may resort to the Deputy Commissioner for the issue of coercive processes; but he can do so only in respect of one year's rent now. Under the law as proposed to be modified, he will be able to recover two years' arrears through the agency of the Revenue Department. This provision is calculated to benefit the tenant as much as it does the superior holder.

I may perhaps add that the alteration proposed to be made by clause I of the Bill is no violent innovation. The proposal is to give in respect of rents also the right of first charge. That the superior holder has some sort of a lien is recognised in all the British Indian Acts relating to land revenue. That is the justification for giving this recognition to rent also. I may refer to passages in Acts having force in British India in which the right of first charge is recognised.

The speaker then read and commented upon various sections of the Madras Rent Recovery Act and of the Tenancy Acts of the United Provinces, the Punjab and Bengal, and proceeded,—

"All these provisions will clearly show that wherever an occupancy right is recognised in favour of the tenant, or he has any saleable interest in the holding, the landlord has a corresponding right of charging such right or interest with the burden of the rent due to him. The question of a first charge will, of course, never arise in the case of a precarious tenancy under which the tenant obtains no sort of interest in the holding itself."

MR. H. V. NANJUNDAYYA then moved that the Bill to further amend the Mysore Land Revenue Code be read in Council.

MR. C. S. DORASWAMI IYER, in seconding the motion, said:—

Sir,—In the absence of Mr. Ramanna I beg leave to second the motion. It is clear that the Inamdars claimed a footing of equality with Government with reference to rent payable to them, and wanted a paramount charge but Government is pleased to give them only a first charge. This is a matter in which the Inamdars are shown some indulgence. With these observations, I beg to second the motion.

THE PRESIDENT MR. K. P. PUTTANNA CHETTY.—

Gentlemen,—The proposition moved by my honourable colleague was to have been moved by me and it was my intention to have said a few words on the subject. In the circumstances explained so lucidly by Mr. Nanjundayya, I have great pleasure in supporting the motion. I shall now make a few observations on the motion.

In the year 1906 a majority of the Judges of the Chief Court decided that the rent or revenue payable by an inferior holder (whether a Khadim tenant or not) to a superior holder in respect of land in an Inam village could not be enforced as a charge on the holding in respect of which the arrears accrued. As a result of this decision it has been represented that, in a large number of cases, the Inamdars are put to considerable difficulty in recovering from their tenants the arrears of land revenue due to them. You are aware that very often it may happen that the tenant possesses no property other than his holding from which the superior holder could hope to recover his dues. In such cases he looks only to the tenant's interest in the land as a means of recovery. But the tenant can successfully evade payment altogether if he alienates his interest in the land collusively to another person. It is not always possible for the Inamdar to prove the fact of such fraudulent alienation in all cases. And even if he could do so it will be only by incurring a disproportionately large amount of expenditure and by carrying on a protracted suit in a Civil Court. Besides this, Kadim tenants in Inam villages are invested with certain rights and privileges under the Land Revenue Code, by means of which they enjoy complete security of tenure and the Inamdar has an additional claim in these cases to be placed in an equally advantageous position as regards the recovery of his dues from the land. Ever since the decision above referred to was passed by the Chief Court, the Inamdars in the State have been bringing this hardship to the notice of the Government during the annual sessions of the Representative Assembly, and after giving their most careful consideration to the matter, the Government have arrived at the conclusion that legislation should be undertaken to relieve the Inamdars from their present hardship. It is therefore proposed to enact that rent or land revenue payable by an inferior holder to a superior holder shall be a first charge on the land held by the tenant. The Council will observe that the above words are wide enough to include cases of rent of the nature of land revenue due by a tenant to his landlord even in respect of lands

in Government villages. I shall explain later on why we have included cases arising in Government villages also. But, at this stage, I shall content myself by stating that the Bill has been framed so as to meet in a very large measure the representations made by the Inamdars during the last five years. If the arrears due to the superior holders are made a first charge on the land, it will not be possible for the tenants to evade payment by alienating their interest in the lands fraudulently or otherwise. The Inamdar will be enabled to follow it in whosesoever hands it may be for the time being so long as the rent due to him has not been paid up. In this connection, I may refer to another representation made by some of the Inamdars. They desired that the charge to be created in their favour should be a *paramount* charge. Government have allowed in the Bill a *first* charge on the land, and the question whether it is necessary to treat it also as a *paramount* charge will no doubt come up for consideration by the Select Committee. The Government would prefer not to commit themselves on this question either way at this stage.

Government are inclined to the view that a superior holder in a Government village may in respect of arrears of land revenue due to him by his tenant be regarded as practically in the same position as an Inamdar in his Inam village; and there seems to be no reason why the special facility which is now proposed to be created in favour of the Inamdars should not also be extended to the superior holders in Government villages. This question will, I have no doubt, receive the attention of the Select Committee. In both cases, the first charge to be created will not altogether be of an unqualified character. It will always be subject to the priority of all Government claims that might be enforced over the land or the holding; and, secondly, it is obviously inequitable that such a charge should be allowed priority over incumbrances created by the inferior holder with the written consent of the superior holder. This explains the proviso to be found in clause 1 of the Bill.

Clause 2 is intended to amend Section 97 of the Land Revenue Code. This section provides special facilities to superior holders to recover rent due to them by application to the Deputy Commissioner for the issue of coercive processes in the Revenue Department. But this procedure can be availed of only in respect of arrears of one year. The effect is that the superior holders are precluded from giving time to their tenants for payment even though they may be willing to do so if they wish to avoid the uncertainty of having to recover their dues through the Civil Courts. It may happen, as for example, in a year of scarcity, that it is to the interests of the tenant that the recovery of the arrears should be postponed. At the same time, it is only fair that, where the superior holder prefers to wait till the tenant is in a position to pay up his dues, he should not lose the easy remedies that would have been otherwise open to him. The Inamdars have been representing that in such cases they may be enabled to recover three years' dues through the agency of the Revenue Department. In the Bill as prepared it is proposed to amend Section 97 by providing for the recovery by this mode of the arrears of two years. But it is for the Select Committee to consider whether the period should be further extended.

I have now to explain only one more clause in the Bill, namely, clause 3. This is more or less in a way consequential to the amendment proposed to be adopted in clause 1. If a charge is created on the land in respect of arrears due, then under Article 132 of the Limitation Regulation, the period of 12 years automatically applies to a suit in a Civil Court for the recovery of such dues; but Government consider it undesirable, alike in the interests of the tenant and of the landlord, that such a long period of limitation should be provided for. Under the law, as it is at present enforced, the Inamdars have got six years for recovering their dues; and it is proposed to fix this period for all superior holders to recover arrears of revenue due to them from an inferior holder. With these remarks, I support the motion now before the Council.

MR. M. C. RANGIENGAR then said:—

Sir,—There is only one small point on which I wish to say a few words with the permission of the President. The law says that the Government has got a paramount charge. This is right and proper as Government accounts are regularly kept and accessible to the public. In the case of the Inamdar who does not always keep regular accounts and whose accounts are not open to inspection, it is possible

that a person lending money to the inferior holder on the security of his holding may find a claim for arrears of *kandayam* trumped up against him. There must be some guarantee or some means whereby people may know exactly what amount is actually due. The superior and the inferior holders may collude to defraud the creditor. Some sort of security ought to be devised to protect the interests of the creditor.

MR. D. VENKATARAMAIYA :—Sir,—So far as the provisions go, they do not, in my opinion serve, go far enough to protect the Inamdar enough. I may explain the position of the Inamdar to be this. Before the introduction of the Revenue Survey, the tenants in Inam and Government villages were in the same boat so far as dry lands were concerned, as there was no right of alienation conceded by the State. There was of course the occupancy right, as they call it. On payment of rent either in kind or in money, the property could be handed over from father to son. The point was clear only so far as wet and garden lands were concerned where the tenant had spent large sums of money in sinking wells or improving property at his own cost. The right of alienation was conceded by the State in favour of tenants with the introduction of the Revenue Survey, which was more of a field settlement. Now on payment of Government revenue during a period of 30 years, the tenant could alienate his property. With regard to Inam villages to which settlement has been introduced they are on the same footing as Government villages. In those villages in which survey and settlement has not been introduced they have been following the ancient custom that prevailed in the State, *i.e.*, tenants occupy lands, cultivate them and pay the rent either in kind or in money or partly in kind and partly in money to the Inamdar. The Inamdar has never conceded the right of alienation to the tenant. He will never permit property to be sold, or mortgaged. As it is, the proposed measure puts the Inamdar in a position to recover the arrears of rent due to him for a period of six years, and enacts that he has a charge on the property.

As regards the doubts expressed by my friend Mr. M. C. Rangiengar that the Inamdars do not keep accounts, and that the Inamdar and tenant may collude together in defrauding the creditor, I do not suppose any outsider lends money to a tenant in an Inam village. This disreputable condition as contrasted with the flourishing condition they were formerly in, is due to the fact that the right of alienation has not been conceded to the tenant. The Inamdar is in the position of Government and for every petty thing the raiyat has to look to him. He will go away to the Government village, if his needs are not satisfied. This is the position of the Inamdar. Any small relief which the Government will be pleased to give to the Inamdar will be welcome. The misapprehension which my friend brings forward is not likely to exist in many cases excepting the few in which the sharers have tenants with such concessions.

The President then said that the matter was for consideration by the Select Committee.

The motion was then carried.

MR. H. V. NANJUNDAYYA then moved that the Bill further to amend the Mysore Land Revenue Code be referred to a Select Committee consisting of Messrs. Rajamantrapravina C. Srinivasiengar, Rajakaryapravina A. Rangaswami Iyengar, Rao Bahadur, K. P. Puttanna Chetty, A. Ramanna, D. Venkataramaiya, D. Devaraj Urs and himself.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

Bill to further amend the Mysore Court Fees Regulation.

MR. H. V. NANJUNDAYYA, in moving that the Bill to further amend the Mysore Court Fees Regulation, 1900, be read in Council, said :—

Sir,—At present when suits are instituted for the recovery of land situated in Government villages, the court fee is calculated by taking the value of the property to be five times the assessment due to Government when the lands are surveyed and settled. But in regard to lands situate in Inam villages, the rule is that fifteen times the value of the net profits gives the value of the land for the purpose of computing court fees. It has been represented that this works as a hardship in respect of lands situated in alienated villages and that the same rule should, as far as possible, be applied to both Government and Inam villages. This representation

has been taken into consideration by Government and it is considered that some relief may be given in respect of lands situated in Inam villages. I now beg to move that the Bill to further amend the Mysore Court Fees Regulation be read in Council.

MR. C. S. DORASWAMI IYER seconded the motion.

MR. D. VENKATARAMAIYA:—Sir,—Government affords relief to the suitor in the case of lands where survey and settlement have been made. There are many villages in which settlement has not been introduced and relief may be given to the suitor in respect of lands situated in such villages also.

MR. M. C. RANGIENAR, who was of the same opinion as his predecessor, said:—

Sir,—For his own purposes the Inamdar will not have the survey and settlement introduced. The tenants in villages where settlement has not been introduced should have some concession shown to them after the manner in which it is proposed to be shown to tenants holding land in settled villages. Fifteen times the net profits will simply be a hardship. In a large majority of cases the Inamdar has got no land of his own. So it is in the interests of the raiyats who have to sell lands or recover lands that the concession must be shown.

MR. H. V. NANJUNDAYYA:—Sir,—The difficulty in the way of adopting the suggestion is that in unsettled villages Inamdars have not got proper accounts There is no proper *paimayishi*, and in many places it is not certain whether raiyats have occupancy rights or not. All these things and the uncertainty of attaching any value to the accounts which are often very meagre and inaccurate have induced Government to restrict the measure only to villages in which survey and settlement has been introduced. There is another consideration which may show that after all there is nothing very unreasonable in the rules at present in force. Fifteen times the net profits for purposes of computing court fees is not likely to be considered extravagantly high and in fact it seems to me that the rule of five times the assessment is a great deal too advantageous to suitors. Especially it does not represent the value of wet or garden lands at all. I know of lands an acre of which is worth from Rs. 500 to Rs. 1,000; and the utmost that five times the assessment would give is Rs. 80. That is extravagantly favourable to the owners of lands. This rule, which is perhaps intended to encourage the cultivation of land by tenants in Government villages, is not extended to persons holding land in alienated villages as the terms and tenure on which they hold lands are so uncertain. I think these considerations will explain why Government cannot go further and extend the protection to villages that have not been surveyed and settled.

The motion was then adopted.

MR. H. V. NANJUNDAYYA, in moving that the Bill be not referred to a Select Committee and that the ordinary rules of business be suspended so as to permit of the Bill being taken into consideration by the Council, said that he had only to add that the fact that the relief is not given in respect of other lands need not prevent the Council from passing the Bill which gives some concession at once.

MR. C. S. DORASWAMI IYER seconded the motion which was carried.

MR. H. V. NANJUNDAYYA then moved that the Bill be considered and adopted by the Council. MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA next moved that the Bill be taken up and passed at a subsequent meeting of the Council. The motion was adopted.

Bill to provide for the Prevention of Smoking by Juveniles in Mysore.

MR. H. V. NANJUNDAYYA then moved that the Report of the Select Committee on the Bill to provide for the Prevention of Smoking by Juveniles and the Bill as amended by them be taken into consideration and adopted by the Council. He referred to the report of the Select Committee on the Bill and explained the changes recommended by that body.

The motion was seconded by MR. SYED AMIR HASSAN and was passed.

MR. H. V. NANJUNDAYYA then moved that the word "from" occurring at the end of sub-clause (3) of clause 1 of the Bill be omitted and the words "in such areas

and from such date as may be notified by the Government in the Official Gazette in this behalf" be inserted instead. In doing so he said that Government did not want to apply the Bill to places where there was no need. For instance there are many villages where the evil sought to be combated does not exist.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA, in presenting the next motion for the consideration of the Council, said :—

Sir,—The word "apparently" occurring in the first line of clause 3 of the Bill is not quite clear. The courts may construe it properly, *viz.*, to mean "by appearance." But, to make the matter quite clear and certain, I beg to propose that the words "actually and by appearance" be substituted. We do not want a boy to be apprehended unless he is under sixteen years of age both actually and by appearance. The alteration is intended to further safeguard the sellers of tobacco who would otherwise be liable to be punished if they sold tobacco to a youth actually above sixteen years though he may appear to be less than that age.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA next moved that the word "conviction" be substituted for the word "offence" occurring in two places in the sixth line of clause 3 of the Bill.

The motion was adopted.

MR. H. V. NANJUNDAYYA then moved that the Bill as amended be passed. The motion was seconded by MR. SYED AMIR HASSAN and carried.

Bill to amend the Indian Evidence Act as in force in Mysore.

MR. H. V. NANJUNDAYYA, in moving the next proposition, said :—

Sir,—The necessity for the Bill to amend the Indian Evidence Act, 1872, as in force in Mysore has already been sufficiently explained by me when I put the Bill before the Council. It was then referred to a Select Committee and they have submitted a report, stating that the Bill requires no alterations and that it may be passed in the form in which it was introduced. I now move that the report and the Bill be taken into consideration and adopted by the Council.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

MR. H. V. NANJUNDAYYA then moved that the Bill be taken up and passed at a subsequent meeting of the Council.

MR. C. S. DORASWAMI IYER seconded the motion, which was carried.

The Council then adjourned *sine die*.

K. P. PUTTANNA CHETTY,
President.